Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlords under the Residential Tenancy Act (the "*Act*") for a monetary order for unpaid rent, for a monetary order for damages, permission to retain the security deposit and an order to recover the cost of filing the application. The matter was set for a conference call.

The Tenant and one of the Landlords attended the conference call hearing and were each affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The Tenant and the Landlords confirmed that they had received each other's documentary evidence.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Landlords entitled to monetary order for unpaid rent and utilities?
- Are the Landlords entitled to monetary order for damage?
- Are the Landlords entitled to retain the security deposit for this tenancy?
- Are the Landlords entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that the tenancy began on October 1, 2011, as a month-to-month tenancy. The parties agreed that rent in the amount of $1,000.00 was to be paid by the first day of each month, and the Landlords had been given a $425.00 security deposit at the outset of the tenancy. The Landlords provided a copy of the tenancy agreement into documentary evidence.

The parties agreed that the Landlords served the Tenant with a Two-Month Notice to End Tenancy for Landlord's Use of the Property issued February 29, 2020 (the "Notice") with an effective vacancy date of June 15, 2020. The parties also agreed that the Tenant issued written notice, by email, on March 31, 2020, that they would be ending their tenancy earlier than the date in the Notice, ending the tenancy effective April 30, 2020.

The Tenant testified that they had used the one month's compensation due under the Two-Month Notice, as their last month's rent, for April 2020.

The Landlords testified that the Tenant had issued the notice to end their tenancy by email, which was not an approved method of serving notice and was therefore invalid notice to end their tenancy. The Landlords testified that they are requesting to recover their lost rental income of $2,500.00, for April 2020, due to the Tenant's improper notice.

The Tenant testified that they gave their notice by email is permitted due to the covid-19 pandemic.

The Landlords testified that when they received the rental unit back, it had not been cleaned properly, that it was damaged, and that there was a bunch of garbage left in the rental unit. The Landlords testified that they are requesting $94.50 for carpet cleaning, $189.00 for cleaning, $180.00 in dump fees, $62.59 for new window blinds, $168.00 for a new door lock and handle, and $700.00 in personal labour costs.

The Landlords testified that their tenancy agreement requires the Tenant to clean the carpets in the rental unit at the end of the tenancy but that this tenant returned the rental unit with dirty carpets. The Landlords testified that it cost them $94.50 to have the

carpets cleaned at the end of this tenancy. The Landlords submitted the invoice for the carpet cleaning into documentary evidence.

The Tenant agreed that they had not cleaned the carpets at the end of the tenancy and agreed that they owed the Landlords the requested amount of $94.50 to have the carpets cleaned.

The Landlords testified that the Tenant returned the rental unit dirty at the end of the tenancy. The Landlords testified that the oven, the kitchen cupboards, and the floors required cleaning at the end of this tenancy. The Landlords testified that it cost them 189.00 to have the cleaning completed at the end of this tenancy. The Landlords submitted the invoice for the cleaning and two pictures of the floor into documentary evidence.

The Tenant testified that they had reasonably cleaned the cupboards and oven at the end of the tenancy and that they did not require further cleaning. The Tenant testified that they agreed that the floor in the rental unit required cleaning at the end of this tenancy but that $189.00 was too much for cleaning floors.

When asked, the Landlords testified that they had not completed the move-in or move-out inspections for this tenancy.

The Landlords testified that the Tenant returned the rental to them with five mattresses and a bunch of garbage left in the rental unit. The Landlords testified that it cost them $180.00 in dump fees to dispose of the mattress and garbage at the end of this tenancy. The Landlords submitted an online list of possible dumping charges from a local landfill site into documentary evidence.

The Tenant testified that they agreed that they left two mattresses and a bit of garbage in the rental unit at the end of the tenancy, but that they had told the Landlords they would be doing this, and the Landlords had agreed to take these items to the dump for them as they had a truck. The Tenant testified that they believe the Landlords' requested amount has been inflated, and there is no way it would cost more than $80.00 to dispose of what they had permission to leave behind in the rental unit. The Tenant testified that they would agree to no more than $80.00 as a disposal fee for the two mattresses and the garbage.

The Landlords did not accept the Tenant's offer of $80.00 in dump fees during the proceedings.

The Landlords testified that the Tenant returned the rental to them with damaged window blinds at the end of this tenancy, The Landlord testified that the blinds could not be repaired, and it cost them $62.59 to purchase new window blinds. The Landlords submitted an online advertisement for new window blinds into documentary evidence.

The Tenant testified that they did not damage the window blinds during the tenancy, but that the blinds were old and yellowing and due to their age had broken down during their tenancy. The Tenant testified that the window blinds were at least 15 years only at the end of the tenancy and that they should not be responsible for buying the Landlords' new window blinds.

When asked, the Landlords testified that the window blinds were two years old at the beginning of this tenancy and agreed that the window blinds were at least 10 years old by the end of this tenancy.

The Landlords testified that the Tenant returned the rental to them with a damaged door lock and handled, and that it cost them $168.00 to have a new door lock and handle installed. The Landlords submitted the invoice for the new door handle with lock into documentary evidence.

When asked to describe how the door handle and lock have been damaged, the Landlord was not able to provide clear testimony on what was wrong with the lock and the handle at the end of this tenancy.

The Tenant testified that they did not damage the door handle and lock during their tenancy. The Tenant testified that the door handle and lock never worked property throughout their tenancy.

The Landlords testified that they had put 20 hours (10hrs x 2 people) of work into cleaning up and repairing the rental unit at the end of this tenancy. The Landlord is requesting $700.00 in personal labour costs, at the rate of $35.00 per hour for 20 hrs. The Landlords testified that the 20 hours of work consisted of 4 hours (2hrs x 2 people) to purchase and install the new window blinds and 16hours (8hrs x 2 people) to load and make 5 trips to the local landfill site.

The Tenant testified that they feel this claim is extremely high as at best it would have taken the Landlords one trip to the dump to get rid of the mattress and garbage they left

in the rental unit, and that they should be responsible for the costs to buy and install new window blinds, as they did not damage the window blinds.

Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

During the hearing, the Tenant agreed that they owe the Landlords their requested amount of $94.50 to have the carpets cleaned. Accordingly, I award the Landlords their request amount of **$94.50** for carpet cleaning at the end of this tenancy.

I accept the agreed-upon testimony of these parties that this tenancy ended on April 30, 2020, and that no move-in/move-out inspection had been completed for this tenancy.

In this case, the Landlords have requested compensation to recover lost rental income for April 2020 due to the Tenant providing improper notice to end this tenancy. Awards for compensation due to damage are provided for under sections 7 and 67 of the Act. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

> "The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:
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> - A party to the tenancy agreement has failed to comply with the Act, regulation, or tenancy agreement.
> - Loss or damage has resulted from this non-compliance.
> - The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I accept the agreed-upon testimony of these parties that the Tenant emailed their notice to end their tenancy to the Landlords on March 31, 2020, listing an effective date of April 30, 2020, as permitted by Residential Tenancy (COVID-19) Order, MO M089 (Emergency Program Act) made March 30, 2020 (the "Emergency Order").

As per the COVID-19 order, an email is deemed received three days after it was sent. Therefore, I find that the Landlords were in receipt of the Tenant's notice to end this tenancy, on April 3, 2020.

Pursuant section 50 of the Act, a tenant who is in receipt of a notice to end the tenancy for the Landlord's use of the property may, with 10 days written notice, end their tenancy earlier than the date on the notice.

> **Tenant may end tenancy early following notice under certain sections**
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> 50 (1) If a Landlords gives a tenant notice to end a periodic tenancy under section 49 [Landlord's use of property] or 49.1 [Landlord's notice: tenant ceases to qualify], the tenant may end the tenancy early by
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> (a) **giving the Landlords at least 10 days' written notice** to end the tenancy on a date that is earlier than the effective date of the Landlord's notice, and

On this portion of the Landlords' claim, I find that there was been no breach of the *Act* by the Tenant when they issued their emailed notice to the Landlords, ending their tenancy as April 30, 2020. As there was no breach of the *Act* by the Tenant, I must dismiss the Landlords' claim for lost rental income for April 2020.

The Landlords has also claimed for permission to retain the security deposit for this tenancy in the recovery of their costs of $189.00 for cleaning, $2,000.00 for painting, $62.59 for new window blinds, $180.00 in dump fees, $168.00 for lock and handle replacement, and $700.00 in personal labour costs. During the hearing, the parties to this dispute provided conflicting verbal testimony on each of these claim items. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this case, that is the Landlords.

An Arbitrator normally looks to the move-in/move-out inspection report (the "inspection report") as the official document that represents the condition of the rental unit at the beginning and the end of a tenancy; as it is required that this document is completed in

the presence of both parties and seen as a reliable account of the condition of the rental unit.

Condition inspection: start of tenancy or new pet

23 (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

Condition inspection: end of tenancy

***35** (1) The Landlords and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit*

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) The Landlords must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The Landlords must complete a condition inspection report in accordance with the regulations.

(4) Both the Landlords and tenant must sign the condition inspection report and the Landlords must give the tenant a copy of that report in accordance with the regulations.

However, in this case, I accept the testimony of the Landlords that they did not conduct the move-in/move-out inspection for this tenancy, as required under the *Act*. Therefore, I find that the Landlords breached section 23 and 35 of the *Act* when they did not complete the required inspections for this rental unit.

Section 24 and 36 outlines the consequence for a Landlords when the inspection requirements are not met, stating the following:

> ***Consequences for tenant and landlord if report requirements not met***
> *24 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if*
> *(a) the landlord has complied with section 23 (3) [2 opportunities for inspection], and*
> *(b) the tenant has not participated on either occasion.*
> *(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*
> *(a) does not comply with section 23 (3) [2 opportunities for inspection],*
> *(b) having complied with section 23 (3), does not participate on either occasion, or*
> *(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations**.***
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> ***Consequences for tenant and Landlords if report requirements not met***
> ***36** (2) Unless the tenant has abandoned the rental unit, the right of the Landlords to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the Landlords*
> *(a)does not comply with section 35 (2) [2 opportunities for inspection],*
> *(b) having complied with section 35 (2), does not participate on either occasion, or*
> *(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

Consequently, I find that the Landlords had extinguished their right to make a claim against the security deposit for damage to the residential property and that the deposits for this tenancy ought to have been returned to this Tenant at the end of this tenancy.

Section 38(1) of the *Act* gives the Landlords 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding to file an Application for Dispute Resolution claiming against the deposits or repay the security deposit and pet damage deposit to the tenant.

> ***Return of security deposit and pet damage deposit***
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> ***38*** *(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of*
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> *(a)the date the tenancy ends, and*
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> *(b)the date the Landlords receives the tenant's forwarding address in writing,*
>
> *the Landlords must do one of the following:*
>
> *(c)repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*
>
> *(d)make an application for dispute resolution claiming against the security deposit or pet damage deposit.*

As the Landlords, in this case, had extinguished their right to make a claim against the security deposit, I find that the Landlords were in breach of section 38 (1) of the *Act* when they failed to return the deposits for this tenancy to the Tenant within 15 days from the later of the day the tenancy ended or the date the Landlords had received the Tenant's forwarding address.

In this case, I find that this tenancy ended on April 30, 2020, the dated the Landlords took back possession of the rental unit. In addition, I find that as of the date the Landlords filed for this application for dispute resolution, October 18, 2020, that they were in possession of the Tenant's forwarding address. Accordingly, the Landlords had until November 2, 2020, to comply with section 38(1) of the *Act* by returning the security deposit in full to the Tenant, which the Landlords did not do.

Section 38 (6) of the *Act* goes on to state that if a landlord does not comply with the requirement to return the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

> ***Return of security deposit and pet damage deposit***
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> *38 (6) If a Landlords does not comply with subsection (1), the Landlords*
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> *(a) may not make a claim against the security deposit or any pet damage deposit, and*

> *(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

Therefore, I find that pursuant to section 38(6) of the *Act,* the value of the security deposit for this tenancy has doubled, and is now valued at $800.00, due to the Landlords' breach of section 35 of the *Act*.

As for the Landlords' claims for compensation in the amount of $62.59 for new blinds, $168.00 for new locks, in the presence of conflicting testimony, and in the absence of a reliable move-in/move-out inspection report, I am left to rely on the remaining documentary evidence provided by the Landlords' to prove the condition of the rental unit at the beginning and the end of this tenancy. I have reviewed the totality of the Landlords' documentary evidence submissions to these proceedings and I find that the Landlords has failed to include any evidence to support their claims regarding the condition of the rental unit at the beginning of this tenancy. Additionally, I find that the Landlords have failed to provide documentary evidence to support their claim that the Tenant had damaged the door lock and window blind had been during this tenancy. Therefore, I dismiss these portions of the Landlords' claim.

Regarding the Landlords' claim for compensation in the amount of $189.00 for cleaning the rental unit at the end of this tenancy and $180.00 in dump fees; I accept the agreed-upon testimony of these parties supported by the Landlords' picture evidence that the Tenant had returned the rental unit with uncleaned floors at the end of the tenancy.

However, the parties to this dispute offered conflicting testimony regarding the need for all the additional cleaning listed in the Landlords' claim and the amount of garbage left in the rental unit at the end of this tenancy. I have reviewed the Landlords' evidence submissions, and I find that the Landlords failed to submit supporting documentary evidence of their claims regarding the amount of garbage left in the rental unit and that the oven and cupboards required additional cleaning at the end of this tenancy. In the absence of sufficient evidence to support their claim.

Although, as the Tenant agreed that the floors in the rental unit required cleaning and that there were two mattress and a some garbage left in the rental unit at the end of this tenancy, I find that the Tenant breached section 37 of the *Act* when they returned the rental unit to the Landlords with uncleaned floors and garbage left in the unit at the end of this tenancy.

Leaving the rental unit at the end of a tenancy

37 *(2) When a tenant vacates a rental unit, the tenant must*

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the Landlords all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I have reviewed the Landlords; invoice for cleaning submitted into document evidence, and I noted that the Landlords had submitted an invoice for cleaning that does not provide a breakdown of the cleaning completed. Accordingly, I find that I am unable to determine the Landlords' true cost associated with the cleaning of the floors in the rental unit at the end of this tenancy. Additionally, I find that there is no invoice for the dump fees that the Landlord has claimed for in these proceedings. Therefore, I find that the Landlords have not provided sufficient evidence to support the values of their claims for floor cleaning and dump fees, and I must dismiss the Landlords' claim for the return of their requested cleaning cost and in dumping fees in their entirety.

However, an arbitrator may award compensation in situations where establishing the true value of a loss is not straightforward. As it has been determined that the Tenant breached the *Act* when they returned the rental unit to the Landlords with dirty floors and garbage left in the unit, I find it appropriate to award the Landlords the nominal amount of **$100.00** to clean the floors and dump the garbage left in the rental unit at the end of this tenancy.

The Landlords have also claimed to recover the costs to have the rental unit painted at the end of this tenancy, in the amount of $2,000.00. In determining the suitable award for painting, I must refer to the Residential Tenancy Branch guideline # 40 Useful Life of Building Elements. The guideline sets the useful life of interior paint at four years.

I accept the Landlords’ testimony that the rental unit had been freshly painted at the beginning of this tenancy; I also accept the agreed-upon testimony of these parties that this tenancy had been for a term of nine-years and that the Landlords had not painted the rental unit during the term of this tenancy. Therefore, I find that the interior paint was nine years old at the end of this tenancy. Accordingly, I find that the interior paint in this rental unit was at the end of its life expectancy and that the Landlords are not entitled to the recovery of their costs for painting the rental unit at the end of this tenancy, and I dismiss this portion of the Landlords’ claim.

Finally, the Landlords are also claiming $700.00 in personnel labour costs, at the rate of $35.00 per hour for 20hrs worth of work. The Landlords indicated in their testimony that the hours of work were for trips to the dump and installing the new window blinds. As stated above, it has already been determined that the Landlords' claim for new window blinds and for dumping fees have been dismissed; accordingly, I must also dismiss this portion of the Landlords' claim.

However, I acknowledge that I did award the Landlords a nominal amount as the Tenant had greed that some garbage had been left in the rental unit at the end of this tenancy. Therefore, I find that the Landlords are entitled to a nominal award for their labour for one trip to the dump, in the amount of **$50.00**.

Overall, I find that the Landlords have proven an entitlement to an award of $244.50, consisting of $94.50 for carpet cleaning, $100.00 in a nominal award for cleaning floors and dump fees and $50.00 in a nominal award for personal labour costs. I grant permission to the Landlords to retain $244.50 from the security deposit they are holding for this tenancy, in full satisfaction of this awarded amount.

Additionally, section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlords have been partially successful in this application, I find that the Landlords are entitled to recover the $100.00 filing fee paid for this application. I grant permission to the Landlords to retain an additional $100.00 from the security deposit they are holding for this tenancy, in full satisfaction of this award.

I order the Landlords to return the remaining $455.50 security deposit they are holding for this tenancy to the Tenant, within 15 days of receiving this decision.

I grant the Tenant a monetary order for the recovery of their remaining security deposit for this tenancy in the amount of $455.50.

Conclusion

I find for the Tenant under section 38 of the Act. I grant the Tenant a **Monetary Order** in the amount of **$455.50.** The Tenant is provided with this Order in the above terms, and the Landlords must be served with this Order as soon as possible. Should the Landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 10, 2021

Residential Tenancy Branch